Property Casualty Insurers
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Shaping the Future of American Insurance
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STATEMENT

PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA (PCI)

SB 763 – AN ACT CONCERNING THE CONNECTICUT UNFAIR INSURANCE PRACTICES ACT

COMMITTEE ON INSURANCE

February 3, 2009

PCI is a national property and casualty insurance company trade association that represents over 1000 member companies. PCI member companies provide almost 42% of Connecticut's total property and casualty insurance coverage.

PCI strongly opposes SB 763, which would remove the "general practice test" test from the definition of an unfair claims practice, opening the door for the Department to sanction an insurer for single acts or omissions, and would create a private right of action for violations of the law, subjecting insurers to a massive increase in litigation and liability costs. Few measures would be as damaging to the state's insurance industry or as costly to consumers; few measures would bring such a windfall to the state's personal injury attorneys.

Like most state laws, the Connecticut Unfair Insurance Practices Act is based on the NAIC model act, which requires a finding that an insurer acted "with such frequency as to indicate a general business practice". The general business practices test acknowledges that the claims process involves almost countless ministerial actions by claims personnel, clerical staff and even computer equipment. The current law strikes the appropriate balance between protecting the consumer and recognizing the realities of the insurance claims process – a balance that is completely reversed by this bill. Deeming a "single act" as an "unfair practice" and subjecting an insurer to the full impact of CUIPA for a clerical error by a clerk turns the law on its head and would impose major new costs on the industry. In addition to the direct costs, this change in the law would have a significant chilling effect on claims handling as insurers would be discouraged from aggressively investigating suspected fraudulent claims.

This provision would be damaging enough on its own but, unlike past attempts to pass such a measure, this bill significantly compounds the problem by also creating a private right of action for violations of a law – a law where the margin of error has been reduced to just one act. The private right of action would not just be enjoyed by the insured but by third-party claimants as well. This is in direct conflict with the purpose and intent of the NAIC Model Act, which states that, "This Act is inherently inconsistent with a private right of action."

There is a reason why only five states permit third-party private rights of action. (West Virginia repealed its third-party law several years ago because of its effect on economic development).

In addition to significantly increasing the cost of insurance for consumers and businesses, burdening the judicial system with frivolous legal claims, and adversely impacting the timely settlement of insurance claims, this provision is simply unnecessary. Insureds already have a right of action against their insurer based on their contract. And an insured has any common law actions permitted based on traditional tort theories of fraud or infliction of emotional distress. Further, insurers' practices are heavily regulated and the absence of a private right of action hardly gives insurers license to treat claimants poorly. The Insurance Departments is directed by law to assure insurers' good faith and compliance with unfair trade and unfair claims settlement practice laws and, of course, has the authority to investigate violations and to levy sanctions from cease and desist orders, fines and suspension of an insurer's license.

The direct and indirect costs imposed by this bill on insurers would be great and would be passed on to consumers. According to the respected Milliman actuarial consulting firm, in 5 of the 6 states with third-party bad faith laws (including West Virginia before it repealed its law), auto bodily injury (BI) liability pure premium cost trends after enactment of third-party bad faith laws were "clearly and substantially higher than the countrywide trend in costs over the same period." Citing other research, Milliman noted that third-party bad faith laws led to an increase in auto BI liability insurance premiums of up to 14.5%. As for first-party bad faith, Milliman estimated that enactment of similar legislation in Washington would cost consumers an additional $466 million annually.

There may not be another measure that would have such an impact on the insurance industry's perception of the state as a hospitable environment for business. Insurers already doing business in the state would have good reason to reduce their market share; other insurers would be discouraged from entering the market. The result would be less competition and even higher premiums for insurance consumers.

This punitive measure is not just targeted at the insurance industry; it is anti-consumer as well and will benefit only one group – personal injury lawyers. It is unnecessary and there is no objective information indicating that Connecticut should join the minority of states that permits a single act to constitute an unfair claims practice and the very small number of states that permit a private right of action for violations of the law. Current law maintains the proper balance between consumers and insurers and PCI urges the rejection of this ill-advised attempt to overhaul the Unfair Insurance Practices Act.